UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

IN RE:	.	Case No. 19-42890-MJH
	.	
	.	Chapter 13
SARAH HOOVER,	.	
	.	
Debtor.	.	
. . . . .	.	
	.	
SARAH HOOVER,	.	Adv. No. 20-04002-MJH
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, et al.,	.	1717 Pacific Avenue, Suite 2100 Tacoma, WA 98402
	.	
	.	Friday, November 20, 2020
Defendants.	.	9:01 a.m.
. . . . .		

TRANSCRIPT OF MOTION FOR SUMMARY JUDGMENT WITH NOTICE OF HEARING [13];
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (PARTIAL) WITH NOTICE OF HEARING [42];
MOTION FOR SUMMARY JUDGMENT RENEWED (DKTS #13 AND #29) WITH NOTICE OF HEARING [58];
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WITH NOTICE OF HEARING [62];
MOTION FOR SUMMARY JUDGMENT WITH NOTICE OF HEARING [65]

BEFORE THE HONORABLE MARY JO HESTON VIA TELECONFERENCE
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

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(Proceedings commence at 9:01 a.m.)

THE COURT: -- for summary judgment and partial summary judgment in the adversary proceeding of Hoover v. QLS et al., Adversary Proceeding Number 20-04002.

Do I have Ms. Henry on the phone for the plaintiff?

MS. HENRY: Yes, Your Honor. Chris Henry on the phone for plaintiff, Ms. Hoover.

THE COURT: Good morning.

Mr. Norman, are you on the phone for PHH?

MR. NORMAN: Yes. Good morning, Your Honor. Robert Norman.

THE COURT: And I guess you're on the -- you're representing HSBC Bank as the trustee --

MR. NORMAN: Yes.

THE COURT: -- and the -- and NewRez, as well, correct?

MR. NORMAN: Correct, Your Honor. Thank you.

THE COURT: Okay. And Mr. Joseph McIntosh for --

MR. JOSEPH MCINTOSH: I'm here, Your Honor.

THE COURT: -- QLS. All right.

MR. JOSEPH MCINTOSH: Yes, Your Honor. I'm here.

THE COURT: And Mr. John McIntosh for IH6 property.

MR. JOHN MCINTOSH: I'm here.

THE COURT: Okay. All right. So I guess I will start with you, Ms. Henry, if you want to say anything further

in addition to what was in the pleadings. And one of the things that I would like you to address is just where you see, if any, material issues of fact relative to the other motions for summary judgment.

MS. HENRY: Okay.

Your Honor, today, we ask the Court to find that the defendants have willfully violated the automatic stay, and then Ms. Hoover should be granted partial summary judgment on liability with damages to be determined at trial.

There are three key reasons that the Court should rule in the Hoover's favor. No matter how the Court looks at the issue, her home is property of this bankruptcy estate. The foreclosure was done in violation of the automatic stay, and the violation was done willfully by all defendants in this case.

First, as the Court evaluates this case, it's important to remember that the definition of what is property of the estate is broad, and exclusions under 541 are interpreted narrowly. Second, once this Court determines that Ms. Hoover's house is property of the estate, a foreclosure of that house necessarily violated the stay. Third, liability for a violation of that automatic state only requires that the actions of defendants were willful, which does not require knowledge of Ms. Hoover's bankruptcy filing prior to the foreclosure sale or that Ms. Hoover's bankruptcy is now -- or

the fact that Ms. Hoover's bankruptcy is now closed.

The main facts for determining whether the property is property of the estate and whether the stay is violated, as far as the plaintiff is concerned, are issues that are not of any material fact. It is undisputed that PHH had knowledge of Ms. Hoover's bankruptcy prior to the sale, and they also had knowledge of -- that the sale was invalid after the sale, when they confirmed that she was a successor-in-interest to the property. And that is an undisputed fact here.

It's also undisputed that QLS was aware of the bankruptcy as early as the 24th of September, which was several days after the sale, 11 days after the sale. And they still had ability to have stopped the sale when they affirmatively knew about it, but they chose to send that trustee sale -- the sale deed ahead of time, and they believe that that shelters them from liability. We do not believe it shelters them from liability because regardless of whether or not that trustee's deed was sent to the third-party purchaser, they always had the ability to come to the Court, notify the trustee that a sale was held in violation of the foreclosure, and also to notify PHH that Ms. Hoover had filed the bankruptcy and that this sale was invalid. Because QLS always knew it was invalid, and they instead chose to egg on IH6 to bring a motion to annul here, as opposed to being a party that was neutral.

IH6 also claims that they had no knowledge about the

bankruptcy. They may not have known about the foreclosure actually before the filing, but they certainly were on constructive notice that Mr. Suleiman had passed away in 2015. There was a nonprobate estate that had been filed, and as a third-party purchaser, in part of their due diligence, they would have known that there was a sale -- I mean, there was a will that had a pour-over provision into a trust and that Mr. Suleiman was deceased. And then, when they later on found out about Ms. Hoover's bankruptcy, which we have conclusive records it was prior to October 23rd and they have told the Court otherwise, they chose to again do nothing and pursue Ms. Hoover to actually rent her own home. They also told her that to rescind the sale would be a big cost of over $100,000, they were not interested in doing. They also chose to do nothing.

And when Ms. Hoover's attorney attempted to mitigate the damages here, get all parties on board, try to figure out what we could do to rescind this, to resolve the situation, and to at least have all parties at the table because there was quite some effort in getting a hold of PHH, no party that was corresponding with the debtor's attorney would agree to affirmatively get PHH into the conversation and affirmatively find out whether or not PHH knew about the sale prior to the bankruptcy, which they did.

The other issue here, of course, is whether or not

this is property of the estate. We think that this issue is fairly clear that whether or not there's a spendthrift trust here is irrelevant because under bankruptcy law and the In re Findley case, in bankruptcy, only the portion of a trust that has accrued and is ready for distribution to the beneficiary in subject to seizure, which means that creditors could get at that portion of the trust. Here, it's unequivocal that the property at issue was meant to be distributed to Ms. Hoover, and it accrued immediately upon his passing in (indiscernible) will when that property came into the trust, and a bankruptcy court and the trustee would have access to that property in the bankruptcy.

I'm not sure why Washington State bankruptcy -- Washington State cases on trust law and spendthrift trusts has not been evaluated by the defendants, but to the best of my knowledge, our arguments have not actually been addressed at all. They haven't been refuted. We think that there is no issue of material fact here for the Court should determine those issues, whether or not this is property of the estate, whether or not an automatic stay was violated, and then also, as I've just pointed out, whether or not the actions of the parties were willful.

Willfulness, as I've explained in my brief, does not mean that you had knowledge prior to the bankruptcy. It means that once you found out about the bankruptcy, you know, before

or after, you took no action to remedy the stay violation. The law in the Ninth Circuit is very clear under the Sternberg v. Johnson case that they -- creditors have an affirmative duty once they know about the stay violation to remedy their actions and right the stay. It's also clear that if a bankruptcy has been closed, it does not mean that a stay violation has not taken place. It needs to be remedied. And that also seems to be an issue here being argued by the defendants.

Lastly, the -- Ms. Hoover is asking here for partial summary judgment and that damages be something that is determined at trial. We certainly have made a showing that she has damage to her property in that the sale has happened on her house and that she has been incurring bankruptcy -- she's been incurring attorneys' fees to determine that willful violation has taken place and in litigation. And under 362(k)(1), those are actual damages under the statute.

We also ask that this -- there be a ruling that the joint and several liability among the defendants here. And to the Court's question as to whether or not there's an issue of material fact, it is our position that there's -- to the extent that there are factual issues here, those issues go to the weight of damages among the parties, the weight of damages that are part of the automatic stay, and that depends on when each party learned about the automatic stay, what action or inaction is taken, and the extent of their liability.

And so we do not believe that there is an issue that the Court would have to determine for the plaintiff's position for determination of stay violation.

And we think those are the issues to discuss today --

THE COURT: So --

MS. HENRY: -- as far as the plaintiff's motions.

THE COURT: -- if you could address -- because I think you've taken the position that with regard to the annulment of the stay, that there are issues that require a hearing. Can you address that?

MS. HENRY: As far as an issue of annulment for the stay, Your Honor, under 362(b), there is a significant amount of equity in this property. There's $167,407.96 that was distributed into the court's registry. There's no issue here that this property would have been something at the time that the estate of the bankruptcy would not have allowed to have gone into a relief from stay type of situations or an annulment, for that matter.

The creditor, I mean, IH6 here is the only one asking for an annulment of the stay. PHH has not asked the Court for annulment of the stay. They are the creditor. And that's because they can't ask for an annulment of stay. They received actual knowledge of the stay violation.

And IH6, in order to win on their motion to -- on their motion to annul, has to prove that the creditor here

didn't -- did not commit a stay violation or -- I mean, sorry, that the creditor here did not receive actual knowledge and that somehow they would meet the standards of the motion to annul. And they can't do that in this situation. They clearly knew. And so even thought IH6, as a third-party purchaser, has standing because they have rights in the property, their entire claim relies on the actions of PHH.

And we have a situation here where PHH is not asking to annul the stay. They've got an issue, and if that's not an issue that this Court thinks is that the heart of it, then they have to get around the fact that they never inquired with PHH as to whether or not they had knowledge. They never inquired about those issues. And yet they have come in with conjecture about Ms. Hoover, which we know is false. It's been proven in discovery that Ms. Hoover has always used the correct Social Security number. There was never anything nefarious there, and yet they continue to have that as an issue. She has never filed another bankruptcy. She's had one bankruptcy. Most of the annulment cases revolve -- involve people that have had -- that are repeat filers. That is not relevant here. She has acted in good faith and diligently through the entire case. She did everything within her knowledge and power to communicate with PHH about the bankruptcy, and as a lay person -- and the information that she was being given in this case, she told the entity that she understood she had to tell

to stop the sale.

So the fact that QLS, who is not a creditor, was not given knowledge of whether or not she filed bankruptcy, I don't think is an issue at all. They were -- the fact that QLS's clients, PHH, didn't give QLS information about a bankruptcy filing that they knew about as early as the 9th or 10th of September, when the sale was on the 13th, is an issue that, again, the parties should have with PHH, not with Ms. Hoover.

So that the classic issues of why a court would annul a stay are just not here. And those are unequivocal. And the court looks at the balance of equities. The -- I'm not even sure how I say the name, the Felstead case here is just a number of factors that were determined by a court. No one factor is more important than the others. And I think that there are many factors here that the Court can determine that do not need an evidentiary hearing because they weigh stronger than others.

There's not a repeat filer. She acted in good faith to communicate about the bankruptcy discharge. She was filing bankruptcy to stop the foreclosure. Once she found out she had no way to stop the foreclosure, she let the case dismiss because what was the point anymore. She had lost her home and needed -- did not understand that she could do anything until finally she got a bankruptcy attorney to help her.

So that's where we stand on that issue. She's lived

in this property, always had, had every intention of keeping it. She also had the ability to follow through with the bankruptcy. Arrearages were not that high, and the idea that somebody who had $167,000 of equity in their house was trying to do something to lose a house and the equity just is not something that makes any sense at all.

So I hope that that answers your questions. And if you have any others, I'm happy to answer them.

THE COURT: All right. So it's your position that I can decide this without a hearing, decide the issue of annulment without a hearing.

MS. HENRY: It is my position that the factors that weigh most greatly can be determined without hearing. Now, if the court doesn't agree with that and feels that the balance of the equities need more, then a hearing would be determined. But it is our position in the hearing should not be necessary.

THE COURT: Yeah. I'm not taking a position one way or the other. I'm just trying to understand the parties' positions at this point. Okay. Thank you.

Anything you want to say about -- anything else you want to say about the -- and I will let you do a reply after everyone else's, but is there anything else you want to say up-front about the other motions other than what you have in the pleadings for summary judgment Before I let the other counsels --

MS. HENRY: I do want to point out to the Court that, you know, there's been -- some of the other motions are relying on affidavits that are now clearly incorrect. Ms. Hoover did not give wrong information about her Social Security number. She always uses her correct Social Security number. That has definitively been known and confirmed by QLS as early as January, yet nothing has been done to change those -- I mean, those declarations. IH6 also knew about this bankruptcy far in advance of the date that they put in their declarations. I think that those are important things that the Court should be aware of here.

And there also is no information before the Court that Ms. Hoover is a sophisticated person that would know how to transfer title of property or understand the issues of a trust being in her name or not in her name. And the fact that she has had a company that bought some properties at foreclosure sale whose information was done through an escrow agent doesn't change that fact. So I would also put that before the Court. But I do believe I will leave any other issues in a response to their arguments.

THE COURT: All right.

All right. I'm going to turn to QLS next.

MR. JOSEPH MCINTOSH: Thank you, Your Honor. Joe McIntosh for Quality. This is Quality's motion for summary judgment and dismissal from the adversary case. The single

claim against Quality in the adversary is that Quality willfully violated the stay when it foreclosed this property. There's no other claims against Quality. And this Court will recall that we pretty early on from this case filed a motion for summary judgment, and I think we had a hearing back in May, maybe it was April, and we put forth evidence that Quality did not know about this bankruptcy when it went to sale. And the plaintiff/debtor opposed Quality's motion and requested a continuance of the motion to do discovery to inquire as to whether Quality did, in fact, have presale knowledge of the bankruptcy, specifically, the communications between the lender and Quality, to try and see if there was some notice given to Quality. And the discovery concluded with no evidence that the lender told Quality about the bankruptcy and no evidence that Quality otherwise had knowledge that the bankruptcy prior to sale. And so that's where we are today.

There is no -- there's nothing in the record that shows the Quality knew about the bankruptcy. And I thought I heard counsel mention that knowledge doesn't matter as to a willful violation. That's simply not true. The parties that -- party that willfully violates the stay must have knowledge, and Quality does not. And frankly, I think Quality should have been non-suited when counsel confirmed the Quality had no presale knowledge, but they were not.

A couple items real quickly, Your Honor, that I heard

counsel mention, the first being that Quality gave the trustee's deed or conveyed or delivered the trustee's deed after finding out about the bankruptcy, that's just not true. They learned about the bankruptcy --

THE COURT: I thought what she said was that you accelerated delivery of the deed.

MR. JOSEPH MCINTOSH: Accelerated deliver of -- I don't know what that means, but --

THE COURT: I'm just -- she can clarify when she comes back, but that's how I heard it.

MR. JOSEPH MCINTOSH: Okay. Well, the record will show that the deed was delivered to the purchaser, and Quality subsequently learned about the bankruptcy. So I think that we're on the same page there.

Another item I heard counsel mention -- and she's mentioned this in pleadings before, which she says that Quality needed to give notice to the Court, and I'm still at a loss as to what notice -- or what obligation Quality had to give notice to the Court and what said notice was supposed to say. And procedurally, I'll remind this Court that the lender and the beneficiary have, at all times, maintained that the sale was proper. And they had put the issue before the Court -- whether the sale is proper, they put that issue affirmatively before the Court. So I still am at a loss as to what notice Quality did not provide to the Court in connection with the other

parties.

And I also remind the court that we were neutral to that earlier adjudication about whether the stay applied. We did not take sides with the lender and the purchaser, as counsel seems to suggest, and the Court had ample notice. Again, there was a motion very early on. In fact, it predates this lawsuit, a motion to determine whether that sale was proper or not, with the beneficiary and the lender very strongly maintaining that the sale was proper.

And then -- bear with me a second.

Okay. And then, there was one -- I'm looking at my notes here -- one more item that counsel mentioned is that Quality knew that this sale violated the stay. Again, that's simply not true. We don't know. And I'll remind the Court that when we had that earlier motion, the Court was unable to rule whether the stay applied or not. I don't know if the Court is going to do that on this motion, but we've had many months have lapse where we don't know what the legal outcome of this sale was.

And then finally, Your Honor, there's a theory that's not briefed at all about Quality being vicariously liable with the co-defendant. And I think some of the pleadings referenced this liability arises under agency. There's no evidence in the record that demonstrates Quality is an agent of its co-defendant. And furthermore, as I'm sure this Court is

aware, agents aren't liable for the actions of principals. It's typically the other way around. So this is -- this being a summary judgment motion, if counsel wanted to stick Quality with some theory of vicarious liability, she would need to introduce both the evidence and the legal authority in support of that motion, in support of that theory.

So to conclude, Your Honor, this is a claim against Quality for willful violation of the stay, i.e. knowledge of the stay when they foreclosed. The record has no evidence that they were aware of the stay. Therefore, the claim fails as a matter of law and must be dismissed short of a trial. Thank you.

THE COURT: All right. Can you address -- because I think the -- first of all, do you agree that you did have knowledge of the bankruptcy as of 9/24? There's no dispute there, correct?

MR. JOSEPH MCINTOSH: It was 9 --

THE COURT: When I say "you," I mean QLS.

MR. JOSEPH MCINTOSH: Now, bear with me. It was 9/24 in the afternoon. They got a call from someone out of state about the bankruptcy without -- my records show it was without any context, without any proof of interest. But yeah, the date on that, Your Honor, is 9/24/2019.

THE COURT: All right. I just was trying to establish that there was no issue of fact on that point.

All right, thank you. Anything else?

MR. JOSEPH MCINTOSH: Not from Quality, Your Honor.

THE COURT: All right. I will go to PHH next.

MR. NORMAN: Thank you, Your Honor. Robert Norman.

Your Honor, what I wanted to add beyond the papers to really narrow the issue, at least from our perspective, is a Washington Supreme Court case, Fidelity Mutual Savings Bank v. Mark, 112 Wn.2d 47, 53 (1989). And, Your Honor, this deals with title in the state of Washington and our argument and our point that this property, the Bonney Lake property, was never deeded to the trust. That's undisputed.

The case -- I'm reading directly from the case, Your Honor. Quote:

> "Title to real property can only be conveyed by a valid, acknowledged deed and the conveyance must be recorded in the county where the property is situated."

That's at pinpoint Page 53.

Your Honor, it's undisputed that did not happen. It's also undisputed that two other properties that were in this trust were conveyed to the trust, the properties in Kent and Aubrey. So clearly, the folks that --

THE COURT: I'm sorry, what -- can you repeat that? I -- the last sentence.

MR. NORMAN: Yes. Yes, Your Honor.

The Ali Suleiman Trust really dealt, or attempted to deal, with three different properties, the Bonney Lake property, which is the subject of this case, and the undisputed evidence before the Court is that title was never transferred from Ali Suleiman's name, in his individual capacity, into the trust. The opposite of that, for two other properties that Ali Suleiman had, one located in Kent, Washington, and one located in Aubrey, both of those properties were deeded from his individual capacity into the trust because that's what you do to transfer property into a trust, pursuant to this Washington Supreme Court authority.

Because that never happened at the time this bankruptcy was filed, despite any undisputed facts of actual notice, possessory interest, things like that, Ms. Hoover had no interest to protect with the automatic stay. So I -- our position -- and this is, you know, throughout the briefs -- is that there was no stay violation for that simple reason. The analysis ends there. All of the discussions about loss mitigation, payments, et cetera, none of that is material to deciding whether this was property of the estate when she filed that bankruptcy.

And, Your Honor, I --

THE COURT: The language -- because you focus on title, which I understand why you're focusing on title, but the language of the Bankruptcy Code talks about an interest of the

debtor in property. Are you taking the position that she had no interest under the undisputed facts of this case?

MR. NORMAN: Your Honor, we're taking the position that she had no legal title interest. You know, even if she had a possessory interest, she didn't have a title interest. For example, a tenant filing bankruptcy or an occupant filing bankruptcy, that's not going to stop a foreclosure on a piece of property. It may stop them from being evicted until relief from stay is obtained, but it doesn't impact legal title. I believe that was briefed in the papers. But yes, that's our position.

THE COURT: So what changed between the time that she was made -- was confirmed as a successor-in-interest and the time of the sale?

MR. NORMAN: Nothing changed, Your Honor, with respect to title. It is my understanding, months after the bankruptcy was filed through her counsel, I believe she did provide the paperwork that PHH was requesting just to identify her as a confirmed successor-in-interest, items like providing the will and other information, but the -- I really think that's a non-material issue because that was done, I think, three months later in, I want to say December of 2019. The area -- the timeline that we're focusing on is what she's contending violated the stay. It's that foreclosure sale that happened in September, four days after she filed, you know, the

bankruptcy.

THE COURT: And so it's your position that a beneficiary under a deed of trust that has knowledge of a party's asserted interest that -- and that has control of when somebody becomes a confirmed successor-in-interest has no duty until the title is -- to take any action if they're aware of a bankruptcy?

MR. NORMAN: Your Honor, I think that's right. Had title been transferred from Suleiman into the trust prior to that bankruptcy, we'd have a stay violation, but that's not -- those aren't the facts. And it's clear from the facts that they knew how to do that, and either by mistake or otherwise, it just didn't happen for this property. And as a result, all sorts of other safeguards that are in place to stop this type of a situation from happening weren't engaged, for example, you know, before foreclosure sale happens. And I think this is in Quality Loan Services' briefing, right? They check title, they pull title to see has anyone filed bankruptcy before we go to sell. Nothing came up because of this property was not in the trust nor was it in her name. It was in the deceased's name, so Mr. Suleiman, that there was no title interest to protect.

And that's not my client's fault. That's an issue that, you know, that -- that risk of loss, however, we want articulate it, falls with either Suleiman or Hoover, but it's not a stay violation.

THE COURT: Okay. All right. And there's no material issue of fact relative to what's been put forth by the plaintiff in terms of when your client was at least aware that there was a bankruptcy, correct?

MR. NORMAN: Not that I'm aware of, Your Honor.

THE COURT: All right. All right.

I'll turn to IH6 then.

MR. JOHN MCINTOSH: Thank you, Your Honor, John McIntosh on behalf of IH6.

We have moved for summary judgment on three issues. I believe the first is that there was no -- the property itself did not become property of the bankruptcy estate. It's really based on two arguments here. There was a spendthrift provision in the trust agreement. The trust agreement controlled that property. The property was part of the trust at all relevant times, and the legal owners were the trustees of that trust. So the terms of the trust agreement governed that trust agreement was not on the public record.

Something that Ms. Hoover's counsel mentioned earlier for the first time is that IH6 had constructive knowledge. That argument was not made in the briefings, but that is not the case. IH6 did not and could not have had constructive knowledge because when Ali Suleiman died, the nonprobate action documents did not have the trust agreement. It had a will with a pour-over provision but did not disclose on the public record

that Sarah Hoover had any interest in this property whatsoever. Constructive knowledge did not exist here before the sale, before the trustee's deed was issued, before the trustee deed was sent for recording, and before the notice to vacate was posted on the door. IH6 did not have any knowledge of Sarah Hoover's interest in the property or her bankruptcy filing.

So the first issue and the first argument that we are saying is proper for summary judgment -- there's no issue material fact, we don't need to go any further -- is that this property was not property of the bankruptcy estate. The stay did not apply, and the sale should be validated on those grounds.

And the second issue is if there is any type of stay that is determined to apply, we are requesting that the stay be annulled. And it's a balancing of factors set forth in Felstead. There's not one factor that is determinative. The fact that, you know, Ms. Hoover's counsel states that we must prove that PHH didn't have knowledge of the bankruptcy in order to annul the stay, that's not the case. It's a balancing of factors and the equities.

The facts here are that Ms. Hoover's a sophisticated real estate professional. She purchases properties at trustee sales. She knows the roles of the parties. She was represented by counsel when she started administering the trust with her brother as co-trustee of the trust. She maintained a

separate bank account. She filed tax returns on behalf of the trust. She kept the formalities in place for a reason. She was being sued. She was taking loans from hard money lenders, Eastside Funding, throughout this entire time from 2016 to the present. She had financial difficulties. She was being sued by Halshaw Properties (phonetic), who was seeking to pierce the corporate veil, and she was protecting her, quote, "equity" in the property by leaving it in the trust. And that was done intentionally by her. And that's the -- set forth. That's something that she answered affirmatively in her deposition transcript.

As the trustee of the trust with legal title to the property, she had -- she and her brother are the ones who had standing to assert and -- to assert any claim or claims on behalf of the trust property. Beneficiaries do not, but the beneficiary has an interest in the trust, but not an interest sufficient that it would come into the bankruptcy estate.

The -- then, we move forward to the events leading up to the sale and the bankruptcy filing. The -- PHH, in one of the declarations -- and I think it's pretty telling -- their assumption package told Sarah Hoover something very specific. It told her, this is how you provide us with sufficient proof that you've -- you are the successor-in-interest, that you are the owner. You need to provide us with -- I apologize. One second, Your Honor.

All right. Docket 64, Page 53, it indicates:

"Were you transferred the property through deed? Did the court issue an order, decree, or other document related to the disposition of the borrower's property? Did the borrower have a will? Did you acquire an interest in the borrower's real property?

And it goes on to say is, "Once we've determined how you acquired an ownership interest, we will then provide you more individualized lists of accessible documentation."

That's a request for proof of successor-in-interest dated March 21st, 2019. That never happened. Those requirements are -- reflect state law. You need a deed to convey real property in the state of Washington. This is what Ocwen was getting at. This was intentionally never provided.

So there's a reason. There's -- you know, this is -- reasonable inference can be made here that Ms. Hoover took intentional actions to make sure that title was not in her name. Title did not -- was not available to be viewed by a creditor. She was concealing this interest in the property, and that continued with her applications that she submitted, which intentionally did not reflect her -- what she's claiming today, which is a different position. She's claiming a different -- something different than what she -- her position taken pre-bankruptcy.

So leading up to the sale, she was communicating with

Quality directly, did -- took no -- but took no steps to notify Quality of her filing. She claims she did that because she didn't understand the rules of the party, but as we can -- as the undisputed evidence shows, she knows the roles. She's purchased properties from trustee sales, three of them at least, since 2016. She knows the roles of the parties. She can't claim that she doesn't know the role of parties. She doesn't tell Quality that the -- of our bankruptcy filing. She lets this happen. Then, she waits. She doesn't do anything until after the deed is recorded, and then she engages with IH6 after the notice to vacate is posted and she engages with them and talks about leasing the property from them.

Docket 73-17 is a document, an email from Sarah Hoover to Jacqueline Rumins (phonetic).

"Hi, Jacqueline, I've been trying to get in touch with you regarding the property located at the address above. I would like to try and make arrangements with you. Would you give me a call or email me? I am available by text, phone number. Thank you, Sarah Hoover."

This is dated November 16th, 2019.

What -- to whatever extent that Ms. Hoover is now claiming that we had -- we were being demanded to unwind the sale and do -- take some action anytime before or on the date of November 16th is absurd. There -- Sarah Hoover was trying

to make arrangements to be a tenant in the property post-sale with IH6. IH6 didn't have a knowledge of any demand by Ms. Hoover to unwind the sale. And in the same vein, it's -- you know, as -- you know, Quality points out, it's what -- I mean, this property wasn't in your name -- wasn't in Ms. Hoover's name, so it's not clear what exactly the demand on behalf of Sarah Hoover individually was. If it was her as the trustee of the trust, that would make more sense, and certainly that's something that needs to stay consistent throughout this case.

The bankruptcy filing was frivolous, was done in bad faith. There was a skeletal filing. No application for installments to make payments by installments, indicating under penalty of perjury that she didn't have sufficient funds to make the full filing fee was submitted to the bankruptcy court. Not a single other filing was made, and the case was dismissed on September 26th. And then, the debtor took substantial steps and aggressively demanded, without bringing this Court before -- bringing this case before this Court, demanded that the sale be unwound, you know, without taking further court action. There's -- the surplus funds in the court registry, I think, is notable because the proceeds of the sales of the other two trust properties went to the trust estate. Those surplus funds are property of the trust. What happens to those funds, it's not clear, but this bankruptcy filing, you

know, the equity -- it's not -- Ms. Hoover is not claiming and can't claim that she's losing equity in the home, and the surplus funds, she has not established -- you know, she has not come before this Court with -- as trustees of the trust or her individually and established that that's -- that those funds, which represent the equity in the property, are -- belong to her. If they do, then that -- those surplus funds are presumably available to her creditors. But the equity has been preserved, and it's in the court registry. So that it would weigh in favor of validating the trustee sale.

And finally, the last issue I want to touch base on is there's no conduct of IH6 that would have violated the stay. Moving to reopen the bankruptcy and to annul the stay is not, itself, a stay violation. And that is the only conduct that Ms. Hoover is alleging here. I mean, she repeatedly says that to the extent we were damaged, where -- you know, we're not an adversary is what she says in her complaint. She doesn't have a legitimate claim of a willful violation of stay against IH6, and that -- the complaint -- the amended complaint should be dismissed with prejudice as to IH6. Thank you, Your Honor.

THE COURT: All right. Ms. Henry.

MS. HENRY: Thank you, Your Honor.

First thing I want to address is that I believe IH6 and QLS have taken the position that this is all about whether they had knowledge of the -- of Ms. Hoover's bankruptcy prior

to the foreclosure sale. That is just not the law in the Ninth Circuit. The Ninth Circuit is very, very clear.

First of all, if the property was sold, it is a stay violation. Then, the question is whether or not it was willful. And willfulness can be determined even if actual knowledge of a bankruptcy that was filed before the foreclosure sale is known after the bankruptcy. The issue is whether or not affirmative action was taken to remedy that. And we have put forth evidence to the court that QLS knew on the 24th and that IH6 knew prior to October 23rd that they had a sale that was not valid. And they continued to then, instead of trying to fix it, go and tell Ms. Hoover that she could rent her own house. How is she supposed to know? But they knew that they had an invalid sale.

QLS also did take sides. They're saying that they were -- they didn't take sides. We have presented proof to this Court that the -- Ronald -- or Robert McDonald from QLS was having regular communications with IH6's representative, Mr. Lappano. You know, you've got to go and validate the sale. You've got to get this sale annulled with the bankruptcy estate in order to have it be a valid sale, egging them on to do this. Are they egging on PHH and telling them that there's an invalid sale and that, you know, the debtor keeps asking them to rescind? No. that's not what's happening here, Your Honor.

And when the attorney becomes involved, IH6 is

telling you the Court that they waited to do something. The debtor's under an obligation to mitigate damages. The debtor's under an obligation to put everybody on notice, clear notice of the issues, which is what was done here. And there was much effort taken to engage with the parties and to make sure all parties were clear on the issues and to make sure that if there were any issues that were unclear, that they were resolved so that everybody could understand what the issues were. And then if we couldn't make an understanding, it was going to go to court. We've been very, very clear about that. The idea that that they were dragging their feet was not the case. We're under an obligation to mitigate, and that's what was done here.

And then also, as far as PHH's argument about title to the property, that may be state law. That's not bankruptcy law. Bankruptcy law is very clear. It's all interests and -- legal interests and -- is property of the estates. It's very broad under 541, and any exceptions are considered narrow. I've never heard an argument before that an heir to a property when the person who's the title owner is dead, that there is no interest for any other party that might have -- might be a devisee of that property. And that seems to be the position they're taking, which just doesn't jive with bankruptcy law at all because it certainly would be preventing creditors from getting at assets, and it also be preventing debtors from

protecting assets that they have interests in.

I also didn't understand -- IH6 made a point about Ms. Hoover affirmatively saying something at deposition. I'm not sure what evidence he's referring to, but I don't know of any evidence in the record that she said that she affirmatively was preventing creditors from getting at assets. I think we've been very clear as to her understanding and misunderstanding of various issues of how trusts and her interest in the property and how to let PHH and others know about her interests.

And I also want to point out here that in the response to PHH and IH6's motion for summary judgment, we've clarified that in May, Ms. Hoover was asked to specifically by Ocwen, the processor-in-interest to PHH, to give specific documents. She turned them over. She thought that she'd done everything, was told to get the death certificate, the homeowner's insurance quote, driver's license, the page of the trust showing the property address, and the affidavit that she was the co-trustee. She was waiting for communication about anything else. Then, there was a transfer between Ocwen, and PHH then became the owner and heard nothing. And eventually, when she gets back with PHH, she's told to reupload documents onto their portal loan solution center. And the deposition, it was clear that PHH's representative has no idea what was sent up to the portal or what was not sent into the portal because he never looked at that information.

So it's unclear whether Ms. Hoover was told to give the documents that would have been enough. And she was not -- didn't have any understanding that she hadn't given everything that was enough. And by the time she'd received a letter in August, early August of 2019 that there was other information needed, then she was told that, oh, too late. We're too close to the bankruptcy, and you can't do anything now.

THE COURT: Too close to the foreclosure?

MS. HENRY: Sorry, too close to the foreclosure, sorry. Yes. Too close to the foreclosure, can't do anything else. She continued trying. And then, people that she'd been talking to at the that loan servicer, Ocwen before and PHH now, all of a sudden on the eve of sale refused to give her any valid information. And then even worse than that, tell her not to worry and give her the idea that everything's going to be fine and that somehow they actually will rescind sale next day, which of course we know that they did not.

So I think that's all of the points that I have to make, and the rest of them, I will rest on the briefs.

THE COURT: All right. Anyone else?

MR. NORMAN: Your Honor, Robert Norman, if I may very briefly.

THE COURT: Okay.

MR. NORMAN: I just want to address again the question of whether the foreclosure sale, you know, acknowledging that

Ms. Hoover may have had a possessory interest in the property.

IH6 did cite the authority I was referring to in their motion for summary judgment. It's Docket 65, Page 8 of 14. I'm reading from the brief:

"A non-judicial foreclosure only affects legal title to the property and not any possessory rights of the debtors."

And here, they're citing to the In re Walker case out of Pennsylvania. But, Your Honor, that goes right to what we're saying. Under Washington law that we've cited, there was no interest in title because there was no deed from Suleiman to the trust. Under bankruptcy law, at best, when that foreclosure sale happened, she had a possessory interest, which does not stop a nonjudicial foreclosure that deals only with legal title. I think that squarely connects the dots as to why there is no stay violation. Thank you, Your Honor.

THE COURT: All right. Anyone else? All right.

MR. JOHN MCINTOSH: Yes, briefly, this is IH6, John McIntosh on behalf of IH6. I just need to address one quick thing by counsel about saying that IH6 knew conclusively and there's evidence that they knew of the bankruptcy on September 23rd, 2020. There's no evidence of that in the record. That's just -- that's false. The declaration of Michael Lappano filed in the main case says that it received notice of the bankruptcy and Sarah Hoover's interest in the property for the first time

on November 22nd, 2019. So that's the evidence that we are submitting, and that is absolutely contested. I don't know what evidence she's pointing to about the 9/23/2019 date. Thank you.

THE COURT: All right. Ms. Henry, you want to --

MS. HENRY: Your Honor, if I could --

THE COURT: -- you want to address that?

MS. HENRY: If I can clarify. In our response to the summary judgment by PHH and IH6, we included emails by Robert McDonald about his communications with IH6 and saying that, "I have communicated with the third-party purchaser. They do not want to unwind the sale. I let them know that they need to get the sale annulled. I've let them know that they should hire counsel. Mr. Lance Olson is not available, so I'm going to have them talk to John McIntosh."

MR. JOHN MCINTOSH: That's -- I object to all that evidence if that is somewhere in the -- in this record as hearsay.

MS. HENRY: Well, that evidence is in the record.

MR. JOHN MCINTOSH: Well, it's hearsay.

MS. HENRY: And again -- let me just finish, Mr. McIntosh.

There's also emails there by Mr. Lappano that's responding. So I believe that he is your client.

But in any case, to the extent of whether or not we

agree on the dates that they knew or did not know, that is not 100 percent conclusive here. The fact is that they did know, and it just goes to the damage issue, as to whether or not their damages are greater or less because they knew earlier or later. That's all I wanted to clarify, Your Honor.

THE COURT: All right. Anything else?

All right. Well, obviously, there's -- I'm going to need to take the center under advisement. I appreciate the arguments of counsel and the extensive briefing. And it may take me a couple of weeks to get something out. And obviously, if there -- there's going to be a need for -- well, there likely will be a need for further status conference is my guess, but I don't know that for sure at this point. But we will be in -- include any future status conference if one is necessary in the memorandum decision on the summary judgment motions.

And I appreciate counsel's time and arguments. Thank you.

(Proceedings concluded at 9:59 a.m.)

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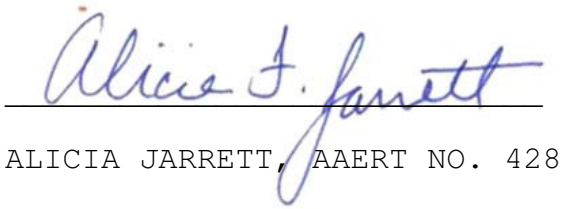
C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.



ALICIA JARRETT, AAERT NO. 428 DATE: April 8, 2021

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